



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,322	07/22/2003	William Noonan	RPS-82002-0499	7299
39698	7590	08/22/2006	EXAMINER	
DUKE W. YEE YEE & ASSOCIATES, P.C. P.O. BOX 802333 DALLAS, TX 75380			AHN, SANGWOO	
			ART UNIT	PAPER NUMBER
			2166	

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/624,322	NOONAN, WILLIAM	
	Examiner	Art Unit	
	Sangwoo Ahn	2166	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The amendment filed on 5/2/2006 has been entered.

Claims 1 – 20 are pending in this Office Action.

Claims 10 and 20 have been amended.

Response to Arguments

Applicant's arguments filed on 5/2/2006 have been fully considered but they are not persuasive.

Applicant argued:

1. Neumark does not teach or disclose planogram.
2. Regarding claim 2, 16, and 13 rejections,
 - Because Neumark is not lacking in inventory management capability, Neumark's existing disclosure vitiates any putative need for Hind's teachings (Each reference represents a complete solution to the problem that each solves).
 - Examiner has only put forth a hypothetical advantage of combining the references based on the Examiner's opinion rather than on a pre-existing teaching, suggestion, or motivation found in the references themselves.
 - Examiner used impermissible hindsight when fashioning the rejection.

- Neumark and Hind would not be combined by one of ordinary skill in the art because they address different problems.

3. Regarding claim 17 rejection,

- Because Neumark is not lacking in inventory management capability, Neumark's existing disclosure vitiates any putative need for Hind's teachings (Each reference represents a complete solution to the problem that each solves).

- No teaching or suggestion is present in the cited references and the Examiner has not pointed out any teaching or suggestion that is based on the prior art.

- Examiner used impermissible hindsight when fashioning the rejection.

- Neumark and Hind would not be combined by one of ordinary skill in the art because they address different problems.

Examiner respectfully traverses the Applicant's arguments because:

1. Applicant defined a planogram as how retailers configure a layout of their respective stores. Neumark teaches that it is possible to determine where any item is located (layout = location of the items) within the stores (column 5 line 2, et seq.), by using the disclosed inventory control and management method. In addition, Neumark discloses that a running account of the locations of the R&C over time and the location information are recorded with date and time. This means that the location information is being updated continuously, to determine the exact location of various products within the store. These records are stored and kept in the databases for the next update as

well. Since the R&C device is capable of reading and determining the location, creating a data file comprising the information collected, it is inherent that the device could store various product information including its location.

2. Applicant's allegation that, the combination cannot be accomplished since each reference represents a complete solution to the problem that each solves, is improper. Question is whether there is something in prior art as whole to suggest desirability, and thus obviousness, of making combination.

In response to Applicant's argument that there is no suggestion to combine references as to make the combination proper, Examiner respectfully submits that there are three possible sources for a motivation to combine references:

"Reason, suggestion, or motivation to combine two or more prior art references in single invention may come from references themselves, from knowledge of those skilled in art that certain references or disclosures in references are known to be of interest in particular field, or from nature of problem to be solved;" Pro-Mold and Tool Co. v. Great Lakes Plastics Inc. U.S. Court of Appeals Federal Circuit 37 USPQ2d 1626 Decided February 7, 1996 Nos. 95-1171, -1181.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

Art Unit: 2166

reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In addition, Neumark and Hind belong to the analogous art (device used in store/shopping center environment to assist users/customers, as to where the items are located). Even though Applicant argued that Cobena and Bala's inventions are directed to solving different problems, there still could be a motivation to combine the two references so that the combination would result in an improved and enhanced version over the previous one, and because the two inventions are from the same field.

3. Traversed based on the same rationale discussed above.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 3 – 5, 7 – 12, 14 – 16, 18 – 20 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,550,674 issued to Yoram Neumark (hereinafter "Neumark").

As per claim 1, Neumark discloses,

A method for updating a retail planogram comprising the steps of

reading an electronic transmission from at least one RFID tag in a retail

environment located in proximity to a product, using a personal shopper device having a

Art Unit: 2166

location sensing mechanism (column 4 lines 65 – 66, et seq.), a memory (column 4 lines 52 – 54, et seq.), a software means (data file creating capability means there is a software), and an RFID reader (column 4 line 51, column 5 lines 57 – 58, et seq.), wherein an initial planogram is stored therein (Figure 1, column 5 lines 36 – 64, column 6 lines 6 - 42, et seq.),

collecting said read electronic location information transmitted from said at least one RFID tag by said shopper device (column 4 lines 52 – 56, column 5 line 57, et seq.),

analyzing and comparing said collected location information by said software means of said shopper device, with said initial planogram in relation to initial location information of said product with collected location information for said product from said collected information (column 7 line 48 – column 8 line 5, et seq.),

updating said initial location information for said product in said initial planogram in response to collected location information to provide an updated planogram to display current location information for said product in a current planogram arrangement in said retail environment (column 7 line 48 – column 8 line 5, et seq.).

As per claim 3, Neumark discloses said RFID tag is an RFID shelf tag (column 4 lines 50 – 52, column 6 lines 6 – 9, et seq.).

As per claim 4, Neumark discloses transmitting said analyzed information to a retail server wherein a database map of product locations is generated in relation to their respective RFID shelf tags (Figure 1, column 4 lines 50 – 60, et seq.).

As per claim 5, Neumark discloses said read electronic information includes unique product identifiers and unique location identifiers indicating unique information about products in said retail environment (column 6 lines 35 – 42, et seq.).

As per claim 7, Neumark discloses said method is performed by a retailer (column 4 lines 36 – 40, column 6 lines 6 – 12, et seq.).

As per claim 8, Neumark discloses all product labels in said retail environment are RFID shelf tags (column 4 lines 50 – 52, column 6 lines 6 – 9, et seq.).

As per claim 9, Neumark discloses generating an updated planogram (column 7 line 48 – column 8 line 5, et seq.).

As per claim 10, Neumark discloses,

A system for updating a planogram comprising,

a personal shopper device having a location sensing means, a software means and an RFID reader (Figure 1, column 4 line 47 – column 5 line 3, et seq.)

a retail system comprising a database in communication with said shopper device (Figure 1, column 4 lines 50 – 60, et seq.),

an initial planogram stored in said database (column 8 lines 1 – 3, et seq.), and

one or more product RFID shelf labels positioned in a retail environment (column 4 lines 50 – 52, column 6 lines 6 – 9, et seq.),

wherein said RFID reader is capable of reading an electronic transmission from at least said one or more RFID shelf labels using said personal shopper device and transmitting collected read electronic information to said database, wherein said initial planogram is updated in response to collected read electronic information by said

Art Unit: 2166

software means and said database is updated with a current planogram reflecting said collected read electronic information (column 4 line 65 – column 5 line 3, column 7 line 48 – column 8 line 5, et seq.).

As per claim 11, Neumark discloses said software means is software that compares initial product location information with collected product location information and identifies differences there between (column 7 line 48 – column 8 line 5, et seq.).

As per claim 12, Neumark discloses said location sensing means reads coordinates from known location points within said retail environment to determine a coordinate location point of said shopper device at an instant of time (column 4 line 56 – column 5 line 3, column 7 lines 25 – 41, et seq.).

As per claim 14, Neumark discloses said RFID shelf label further comprise visible product information including per unit price (Figure 1 elements 20 and 30, et seq.).

As per claim 15, Neumark discloses said RFID label transmits electronic information including unique product identifiers and unique location identifiers indicating unique information to said RFID reader (column 6 lines 35 – 42, et seq.).

As per claim 16, Neumark discloses all product labels in said retail environment are RFID shelf tags (column 4 lines 50 – 52, column 6 lines 6 – 9, et seq.).

As per claim 18, Neumark discloses a printer for printing an updated planogram (column 8 lines 5 – 6, et seq.).

With respect to claim 19, Neumark discloses,

A system for generating an updated planogram in a retail environment comprising,

a portable shopper device having a location sensor, comparative software and an RFID reader (Figure 1, column 4 line 47 – column 5 line 3, et seq.),

a retail system comprising a server, a database in communication with said shopper device,

a wireless communication network (Figure 1, column 4 lines 50 – 60, et seq.),

an initial planogram stored in said database (column 8 lines 1 – 3, et seq.), and

a plurality of product RFID shelf labels positioned in proximity to each of their respective products, wherein said RFID reader reads product location information electronically transmitted from at least one of said plurality of product RFID shelf labels using said personal shopper device and said comparative software compares initial product location information of said initial planogram with said read product location information and updates said initial planogram in response to said read product location information and said database is updated with a current planogram in relation to said read product location information (column 4 line 65 – column 5 line 3, column 6 lines 7 – 14, column 7 line 48 – column 8 line 5, et seq.).

With respect to claim 20, Neumark discloses said database stores said initial planogram and said current planogram concurrently (column 7 line 48 – column 8 line 5, et seq.).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 6, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neumark in view of U.S. Publication Number 2002/0174025 issued to John R. Hind et al (hereinafter "hind").

As per claim 2, Neumark discloses the method of claim 1 as discussed above in 35 U.S.C. 102(a) rejection section.

Neumark does not explicitly disclose said device is fixedly mounted to a shopping cart.

However, Hind discloses said device fixedly mounted to a shopping cart (Figure 3, paragraph 12). It would have been obvious to a person of ordinary skill in the data processing art to combine the above two references because the combination would have provided targeted advertising and personalized service to the customer using the display device on the shopping cart (paragraph 12).

As per claim 6, Neumark discloses the method of claim 3 as discussed above in 35 U.S.C. 102(a) rejection section.

Neumark does not explicitly disclose said method is performed by a consumer.

However, Hind discloses said method performed by a consumer (Figure 3, paragraphs 9 – 14). It would have been obvious to a person of ordinary skill in the data processing art to combine the above two references because the combination would have provided targeted advertising and personalized services (such as providing various product information) to customers using wireless communication devices (paragraph 9)

As per claim 13, Neumark discloses the system of claim 11 as discussed above in 35 U.S.C. 102(a) rejection section.

Neumark does not explicitly disclose said shopper device is a hand-held device having a display in wireless communication with said retail system.

However, Hind discloses said shopper device being a hand-held device having a display in wireless communication with said retail system (Figures 1 – 2, 4 – 5). It would have been obvious to a person of ordinary skill in the data processing art to combine the above two references because Hind's display device would have enabled Neumark's system to provide visual display to users to enhance personalized services, such as providing various information of a certain product.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neumark in view of U.S. Publication Number 2002/0178013 issued to Beth Louise Hoffman (hereinafter "Hoffman").

As per claim 17, Neumark discloses the system of claim 11 as discussed above in 35 U.S.C. 102(a) rejection section.

Neumark does not explicitly disclose a display for displaying an updated planogram.

However, Hoffman discloses a display for displaying an updated planogram (paragraph 36). It would have been obvious to a person of ordinary skill in the data processing art to combine the above two references because Hoffman's planogram display device would have enabled Neumark's system to provide visual display to users to enhance personalized services, such as providing location information of a certain product (paragraph 2 – 3).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8/17/2006 SW



**HOSAIN ALAM
SUPERVISORY PATENT EXAMINER**